

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-160526
		TRIAL NO. 16CRB-8087
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CRAIG TIMS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Craig Tims was on a job site with his supervisor when his supervisor told him to tuck in his shirt. According to the supervisor, Tims berated him and asked him, “What the ‘F’ are you going to do about it?” Tims then reportedly told the supervisor, “I’ll beat you up” and “I’ll just go to your body,” meaning he would beat him in his midsection. When the two returned to their workplace, the supervisor testified that Tims approached him in the parking lot and told him, “When I see you outside, I’m going to box you,” meaning put him in a coffin. Tims denied making the threats.

Tims was charged with menacing, in violation of R.C. 2903.22. After a bench trial, Tims was found guilty and sentenced accordingly.

In one assignment of error, Tims claims that his conviction for menacing was based on insufficient evidence and contrary to the manifest weight of the evidence. When examining the sufficiency of the evidence, we view all evidence and reasonable inferences in the light most favorable to the prosecution, and determine whether the trier of fact could have found all the elements of the offenses proven beyond a reasonable doubt. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). On the other hand, when reviewing the manifest weight of the evidence,

we consider the credibility of the witnesses and weigh the evidence presented to determine whether, in convicting Tims, the trial court lost its way and created a manifest miscarriage of justice. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

To convict Tims of menacing, the trial court had to conclude that he had knowingly caused the supervisor to believe that he would cause him physical harm. *See R.C. 2903.22*. As to the sufficiency claim, Tims argues that the supervisor would not have stayed near Tims after the threats nor delayed calling the police if he genuinely feared for his safety. But this argument goes to the weight to be given to the supervisor's testimony, not its sufficiency. The testimony of the supervisor was sufficient to meet the elements of the offense of menacing.

Tims made a similar argument within his claim that his conviction was against the manifest weight of the evidence. Additionally, Tims notes that the trial court found that the supervisor had been calm during the incident. Tims claims that this evidence also demonstrates that the supervisor did not feel threatened. In essence, Tims argues that the testimony of the supervisor was not credible. Matters as to the credibility of evidence are for the trier of fact to decide. *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 116. This is particularly true regarding the evaluation of witness testimony. *State v. Williams*, 1st Dist. Hamilton Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶ 45. We will not reverse a conviction, as against the manifest weight of the evidence, because the trial court chose one credible version of events over another. Since there was nothing about the testimony of the supervisor that would indicate that the testimony was not credible, we cannot say that the trial court lost its way and created a manifest miscarriage of justice.

We overrule Tims's sole assignment of error, and affirm the judgment of the trial court.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.

To the clerk:

Enter upon the journal of the court on March 10, 2017
per order of the court _____.
Presiding Judge

